IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

WRIT PETITION NO.6177 OF 2004

Shri Gopal Ramchandra Koli ..Petitioner

Versus

Shri Ganpat Mankya Koli since
deceased through heirs and
legal representaives and ors. ..Respondents

Mr.V.A.Gangal for petitioner

Smt. Joan Joshi for respondent 1(c), 2 to 4

CORAM : P.V.KAKADE,J.

DATE : 4th April 2006

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by the lower

appellate court dated 19.12.2003 dismissing the appeal and confirming the judgment and order passed by the trial court decreeing the suit and passing the decree for eviction of the petitioner from residential suit premises.

3. The respondents-plainitffs are landlord in respect of suit premises, which consist of a room at 25-B, Chimbai Road, Bandra (West), at monthly rent of Rs.6/=. According to the plaintiff, his children are marriageable age, which of one son was already married and having his family. The place which he is occupying along with his family is absolutely insufficient and he requires the suit premises for his use and occupation reasonably and bonafide for himself and his family. During the pendency of the suit the original plaintiff expired and his legal heirs brought on record. The defendant resisted the suit claim, inter alia, denying the allegations made by the plaintiff submitting that they had adequate accommodation to reside and therefore, suit was sought to be dismissed.

. The learned trial judge after hearing both the

parties and on the basis of available evidence came to the conclusion that the plaintiff had proved the claim as contemplated under Section 13(1)(g) of the Bombay Rent Act. It was further held that the greater hardship would be caused to the plaintiff if the decree is refused than the defendant if the decree is passed and as such the decree came to be passed.

. The appeal was carried to the lower court, who after hearing both the parties and on the basis of available evidence concurred with the findings recorded by the trial court and dismissed the appeal.

4. On perusal of the judgments of both the courts below vis-a-vis the available evidence, it is quite apparent that reasoning adopted and findings recorded by both the courts below appear to be just, legal and proper when they have come to the conclusion that the premises occupied by the plaintiff is inadequate for their use and residence. The finding to the effect that the greater hardship would be caused to the plaintiff if the decree is refused to be passed also appears to be based on sound principles of law and available evidence

and therefore, I am of the view that it would brook no interference within the writ jurisdiction as contemplated under Article 227 of the Constitution of India.

5. In the result, the petition appears to be devoid of any merits and therefore, stands dismissed with no order as to costs.

6. At this stage the learned counsel for the petitioner submitted that the defendant should be given some time to vacate the premises. In view of the facts and circumstances, it is hereby directed that the possession decree shall not be executed by the respondents till the end December, 2006 from the date of this order on condition that the petitioner and all adult members of his family shall execute an Undertaking to this court that they shall vacate the suit premises after 31st December, 2006 and that in the meantime would not create any third party interest in the suit premises and would to continue to pay the rent as per the agreement between the parties. The undertaking to be furnished within two weeks from the date of this order.